IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2002

CORAM:

THE HONOURABLE MR. JUSTICE S.JAGADEESAN
AND
THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

O.S.A.No.225 of 2001

M/s.Consolidated Agencies
a Partnership firm rep. By
its Partner A.L.Lakshmanan .. Appellant

Vs

1. M/s.Gujarat Carbon & Industries
Ltd., Office Town
R.C.Dutt Road, Baroda 390 005.

2. M/s.Philips Carbon Black Ltd.
1, Netaji Sultan Road
Post Box No.2229
Calcutta 700 001. .. Respondents

PRAYER: Appeal against order dated 29.3.2001 made in Application No.3 713 of 1998 in C.S.No.87 of 1998 of Hon'ble Mr.Justice A.K.Rajan.

! For Appellant : Mr.T.K.Seshadri
^ For Respondents: R.Krishnaswamy, Sr. Counsel

: JUDGMENT

P.D.DINAKARAN,J.

The appeal is directed against the order dated 29.3.2001 made in Application No.3713 of 1998 in C.S.No.87 of 1998 revoking the leave granted under Clause 12 of the Letters Patent to the plaintiff/appellant herein in Application No.304 of 1998 on 2.2.1998 to file the suit in C.S.No.87 of 1998.

2. For the purpose of convenience, the parties are arrayed as per their rank in the suit.

3.1. The plaintiff/appellant herein filed C.S.No.87 of 1998 to direct the defendants/respondents herein to pay a sum of Rs.12,43,657.30 and for a declaration that the plaintiff has no dues payable as against the defendants,

based on the Consignment Stockist agreement dated 1 .10.1985.

3.2. According to the plaintiff, they are entitled for the suit amount towards commission, discount, freight charges, etc., based on the consignment stockist agreement dated 1.10.1985, entered into between the plaintiff and the first defendant in the suit. Even though the said agreement was said to have been forwarded from the office of the first defendant from Vadodara, the plaintiff accepted it only at Madras. Since the office of the first defendant is located outside the jurisdiction of this Court, the plaintiff preferred the above application No.304 of 1998, invoking Clause 12 of the Letters Patent and obtained leave of this Court by order dated 2.2.1998 to sue the defendants in C.S.No.87 of 1998.

4.1. The first defendant/first respondent herein therefore filed Application No.3713 of 1998 to revoke the leave granted on 2.2.1998 in Application No.304 of 1998 to file the above suit, alleging that, apart from the alleged agreement dated 1.10.1985, the plaintiff/ appellant herein was appointed as a stockist by the first defendant/first respondent herein, by another agreement dated 1.4.1993, which is suppressed by the plaintiff/appellant herein. The first defendant/first respondent herein, however, denied any liability to the plaintiff/ appellant herein setting out the details of the transactions between them.

4.2. Inter alia, the first defendant/first respondent herein, referring to Clause 22 of the agreement dated 1.4.1993 that any dispute between the parties to the said agreement would be subject to the jurisdiction of Baroda, Gujarat, contended that this Court has no competent jurisdiction to try the above suit.

4.3. That apart, the first defendant/first respondent herein contended that even as per Section 20 of the Code of Civil Procedure, the plaintiff/appellant herein shall institute a suit only in a Court within whose local limits, the first defendant/first respondent herein actually and voluntarily resides and carries on business, i.e., where its principal office is located, and hence preferred Application No.371 3 of 1998 to revoke the leave granted on 2.2.1998 in Application No.3 04 of 1998.

5. However, the plaintiff/appellant herein denied the dispute and the existence of agreement dated 1.4.1993.

6. The learned Single Judge, upon the above rival contentions, by order dated 29.3.2001, taking note of the fact that the xerox copy of the agreement dated 1.4.1993 contains the signature of the plaintiff/ appellant herein and considering Clause 22 of the agreement dated 1.4.1993, held that there is no ambiguity in the said clause 22 of the agreement, which determines the jurisdiction of the Court to decide the dispute between the parties to the said agreement, even though there is no phrase which confers exclusive or only jurisdiction at Baroda Court, and therefore, revoked the leave granted on 2.2.1998 in Application No.304 of 1998. Hence, the above appeal.

7.1. Mr.T.K.Seshadri, learned counsel for the plaintiff/appellant

herein, placing reliance on the decision of a Division Bench of this Court in NANAK CHAND Vs. T.T. ELEC. SUPPLY CO., reported in AIR 1975 MADRAS 103, contended that it cannot be said that this Court lacks jurisdiction to try the case; that the leave granted by this Court by order dated 2.2.1998 in Application No.304 of 1998, exercising the power under Clause 12 of the Letters Patent, curifies the jurisdictional irregularity said to have been caused either by Clause 16 of the agreement dated 1.10.1985 or by Clause 22 of the agreement dated 1.4.1993; where there are two or more competent Courts which can entertain a suit, the parties to the concerned transaction can contract to vest jurisdiction in one of such Courts to try the dispute; in spite of any agreement in the clause to that effect, in as much as the objection based on such irregular exercise of jurisdiction is a matter in which the parties can waive; and in any event, the restriction as to the jurisdiction agreed between the parties can be waived by grant of leave by this Court, exercising the powers conferred under Clause 12 of the Letters Patent.

7.2. Placing reliance on the decision in M/s.SPONGE IRON INDIA LTD., Vs. A.S. CORPN. LTD., BANGALORE, reported in AIR 1989 ANDHRA PRADESH 206, the learned counsel for the plaintiff/appellant herein contends that ouster or exclusion of jurisdiction of Court having concurrent jurisdiction, should be expressly, unambiguously and specifically available in the agreement itself, by exercising the words only or alone; in the absence of any such expressed exclusion or ouster, the courts at both places have jurisdiction to try the dispute arising between the parties, as otherwise, it is to be presumed that there is no consensus or meeting of minds of the parties to the contract with regard to such ouster or exclusion of jurisdiction of the Court having concurrent jurisdiction.

7.3. Relying on the decision of the Apex Court in A.B.C.LAMINART PVT. LTD., Vs., A.P.AGENCIES, reported in (1989) 2 SCC 163, Mr.T.K. Seshadri, learned counsel for the plaintiff/appellant herein, contended that Clause 22 of the agreement dated 1.4.1993 entered into between the plaintiff and the first defendant only specifies one of the two courts having jurisdiction, without specifically excluding the jurisdiction of the other Court, and therefore contends that both the Courts have jurisdiction.

8.1. Per contra, Mr.R.Krishnaswamy, learned senior counsel for the first defendant/first respondent herein invited our attention to the averments in paragraphs 11 and 12 of the plaint, wherein the plaintiff had stated that the second defendant was assigned the book of debts of the first defendant without informing the plaintiff and took over the alleged liability of the first defendant; as there is no cause of action except the above plea alleged against the first defendant, it is contended that the suit as framed against the first defendant/ first respondent herein in without any cause of action and the same is frivolous.

8.2. In any event, Mr.R.Krishnaswamy, learned senior counsel for the first defendant/first respondent, placing reliance on the decision in ANGILE

INSULATIONS Vs. DAVY ASHMORE INDIA LTD., reported in (1995) 4 SCC 153, contends that parties to the contract have the right to determine the jurisdiction of the Court to try the dispute between them, and once the jurisdiction is thus determined unambiguously, they are not entitled to go back from such explicit term with respect to the jurisdiction of the Courts.

9. With due consideration to the above rival contentions, we are obliged to decide whether the plaintiff is entitled to seek leave of this Court invoking Clause 12 of the Letters Patent to file the above C.S.No.87 of 1998, based on either of the agreements dated 1.10.1985 or 1.4.1993, which provides that any such dispute between the parties to the said agreement shall be decided only by the Court within the jurisdiction of Vadodara,Gujarat or Baroda, Gujarat, respectively.

10.1. In this regard, we are obliged to extract Clause (xvi) of the agreement dated 1.10.1985 as well as Clause 22 of the agreement dated 1.4.1993:
Clause (xvi) of the agreement dated 1.10.1985:
In the event of any dispute in respect of this agreement our decision will be final and binding and jurisdiction will be at Vadodara/ Gujarat.

Clause (22) of the agreement dated 1.4.1993:
In the event of any dispute in respect of this agreement our decision will be final and binding and jurisdiction will be at Baroda, Gujarat.

Therefore, whether the plaintiff relies either on agreement dated 1.1 0.1985 or 1.4.1993, both the agreements provide that, in the event of any dispute in respect of the said agreements, the same shall be decided by the Courts having jurisdiction either at Vadodara or Baroda, Gujarat.

10.2. It is well settled in law that the issue regarding jurisdiction of the Courts has to be decided upon the facts and circumstances of each case. Equally, it is well settled that where there are two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen within the jurisdiction of each of these Courts, parties to the concerned transaction can contract to vest jurisdiction in one of the Courts to try disputes which may arise as between themselves. Therefore, even though the irregular exercise of jurisdiction is a matter in which the parties can waive as held in NANAK CHAND case, referred supra, in our considered opinion, if the parties to the contract agree with a consensus on a particular term of the agreement that the dispute shall be decided only by a particular Court having jurisdiction, the ouster or exclusion of the other Courts cannot be lightly disregarded merely because of the absence of the words only or alone in the said clause. We are therefore unable to subscribe ourselves to the view that the parties to the agreement can waive the irregular exercise of the jurisdiction as held in NANAK CHAND case, referred supra, or with the view expressed in M/s.SPONGE IRON INDIA LTD. case, referred supra, that the ouster of the jurisdiction of other Courts cannot be implied in the absence of the words only or alone in the clause of the agreement between the parties which deals with the jurisdiction of this Court.

10.3. It is true the Apex Court in A.B.C.LAMINART PVT. LTD. case, referred supra, held that so long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law, it cannot be said that the parties have, by their contract, ousted the jurisdiction of the Court, and that if under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them, it cannot be said that there is total ouster of jurisdiction. However, the Apex Court in A.B.C.LAMINART PVT LTD. case itself, after discussing the issue in detail has laid down that when the clause is clear, unambiguous and specific, accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction, and that when certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may in such cases be inferred. Applying the said ratio laid down in A.B.C. LAMINART PVT. LTD. case, referred supra, we are unable to agree with the contention of the plaintiff/appellant herein that merely because the clause relating to the jurisdiction of the Courts to decide the dispute arising under either of the contract dated 1.10.1985 or 1.4.1993 does not contain the exclusionary words like exclusive, alone, only and the like, the jurisdiction of this Court is not excluded or ousted. Our construction in this regard is supported by the decision of the Apex Court in ANGILE INSULATIONS case, referred supra, as relied upon by the learned counsel for the first defendant/ first respondent herein, wherein, the Apex Court, after referring the A.B.C.LAMINART PVT. LTD. case, referred supra, held that, where there may be two or more competent Courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agreed to vest jurisdiction in one such Court to try the dispute which might arise as between themselves, the agreement would be valid.

10.4. In the instant case, even if the petitioner relies upon either of the agreements dated 1.10.1985 or 1.4.1993, it is beyond doubt that parties to the said agreements have unambiguously, clearly and explicitly arrived at a consensus that any dispute under the respective agreements shall be tried only before the Court having a definite jurisdiction mentioned in the said agreements, namely at Vadodara or Baroda, respectively.

10.5. If that be so, finding that the other submissions on merits have no relevance to the issue raised for our consideration, we are satisfied that the learned Single Judge, rightly, by order dated 29.3.20 01 in Application No.3713 of 1998, revoked the leave granted on 2.2.1 998 in Application No.304 of 1998 to file the above suit, and in which event, the plaintiff/appellant herein shall not have recourse either under Section 20 of the Code of Civil Procedure or under Clause 12 of the Letters Patent.

Hence, appeal fails and therefore dismissed. However, there is no order as to costs. Consequently, connected C.M.P.No.1660 of 2001 is also dismissed.

(S.J.J.)(P.D.D.J.)
06.03.2002
Index : Yes/No

Internet : Yes

sasi
sd/-
ASSISTANT REGISTRAR

/ TRUE COPY /

SUB ASSISTANT REGISTRAR

To:

The Sub-Asst. Registrar, Original Side,High Court, Madras.
S.JAGADEESAN,J.
AND
P.D.DINAKARAN,J.

O.S.A.No.225 of 2001

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